IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7998 of 2000
with
SPECIAL CIVIL APPLICATION No 4289 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAGARBHAI KABHAI ZALA

Versus

G S R T CORPN

Appearance:

1. Special Civil Application No. 7998 of 2000
MR GK RATHOD for Petitioner No. 1
MR ASHISH M DAGLI for Respondent No. 1
RULE SERVED for Respondent No. 1

2. Special Civil Application No. 4289 of 2000
MR ASHISH M DAGLI for Petitioner No. 1
MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/10/2001

ORAL JUDGEMENT

#. Both these petitions have been admitted and with the

consent of the parties, the same have been taken up for final hearing today.

#. The petitioner was subjected to the departmental proceedings on the ground that, at the time of inspection of the bus, he threw stone on the checking inspector and that he had mispunched certain tickets. On conclusion of the inquiry, the concerned workman was subjected to the penalty of five stages down in the pay-scale for a period of three years. The said order was challenged by the concerned workman by way of filing the departmental appeal. That appeal was allowed and the matter was remanded back to the disciplinary authority for the purpose of holding the inquiry. Thereafter, the disciplinary authority initiated the inquiry and ultimately passed the order of removal removing the concerned workman from service. That order was subjected to the industrial dispute in Reference (LCA) No.1041 of 1997. The Industrial Tribunal, Ahmedabad allowed the said reference and passed the order of reinstatement without back-wages for the intervening period, but passed the order of penalty of withholding of one increment without future effect. The S.T.Corporation has challenged the said award by filing the petition being Special Civil Application No.4289 of 2000. The respondent workman has also filed the petition being Special Civil Application No.7998 of 2000 insofar as he was denied the back-wages for the intervening period. Both these petitions are heard together and are being disposed of by this common judgment.

#. It was argued by Mr.Dagli that the Industrial Tribunal should not have passed the order of reinstatement as the concerned workman was found to have committed serious misconduct. As against that, Mr.Rathod strongly submitted that since the Industrial Tribunal exercised the powers under section 11-A of the Industrial Disputes Act, this Court may not interfere with the order of reinstatement. He also submitted that the concerned workman has already been reinstated in service in May, 2001. The aforesaid fact about reinstatement is not in dispute as Mr.Dagli has fairly conceded the said aspect. Mr.Rathod also submitted that, this is a case in which the concerned workman should have been given full back-wages and that the Tribunal has committed an error in not granting full back-wages.

#. In the facts and circumstances of the case and since the department itself, initially, had passed the order reducing the five stages in pay-scale of the concerned workman for a period of three years and since the

department itself therefore, did not think it fit to remove the concerned workman from service and it is no doubt true that ultimately by another order, the order of removal was passed, but considering the totality of the facts and circumstances of the case, I am of the opinion that the order of reinstatement is not required to be interfered with. Similarly, considering the misconduct of the concerned workman, in my view, he is not entitled to any back-wages for the intervening period, and, therefore, the order of the Tribunal is not required to be interfered with insofar as the denial of back-wages is concerned. However, in my view, the order imposing the penalty of one increment without future effect is not adequate considering the misconduct of the concerned workman. Therefore, the order of the Industrial Tribunal insofar as it passed the order imposing the penalty of withholding of increment without future effect is concerned, the same is required to be modified in order to see that there may be some deterrent effect on the concerned workman. Therefore, the order imposing the penalty withholding of one increment without future effect is required to be substituted with the penalty of withholding of one increment with future effect and accordingly the concerned workman will be subjected to the penalty of withholding of one increment with future effect. It is clarified that the concerned workman will be entitled to the regular wages from the date of the award of the Industrial Tribunal. The Corporation is directed to fix the pay-scale of the concerned workman accordingly considering the penalty imposed upon the said workman and whatever benefits which are required to be given to the concerned workman, may be given to at the earliest and in any case within a period of one month from the date of the receipt of the writ of this order.

#. In view of what is stated above, the petition being Special Civil Application No.7998 of 2000 is dismissed. Rule is discharged with no order as to costs. So far as the petition being Special Civil Application No.4289 of 2000 is concerned, the same is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)